G. R. S. 59]

GENERAL AND REVENUE SECRETARIAT.

190

(Med)

File No. 129 of 03 04

Serial Nos. 1—2

Papers Filed.

Month June 04

SUBJECT.

Comp Petition of Prabhu Das, Compounder Arkulgud Dispensary, Hassan Dt—

PREVIOUS REFERENCES.	LATER REFERENCES.

G.F. 1290 of 0.

Office note

Gs (1-12)

Branch judicial

Subject Petition No 2550 dated the 14th May, 04 received from Prabhu Das, compounder, Arkalgud Dispensary, Hassan Dt. complaining that Ramaswamy Pillay, Hospital Assistant at Arkal-gud unjustly prosecuted him for mischief by fire before Mr Chandy, Genl Asst to Comr & 1st class Magte at Hassan, who wrongly convicted him and fined him Rs 30, that the conviction and sentence were quashed by the Chief Court on appeal and praying that as he has not been given anything for the last 7 months justice may be done to him - -

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Remark of the Assistant Secretary, Petition Branch on the Petition: —

"I do not clearly understand the relief sought for by the Petitioner. The Petition may be taken as a complaint both against the hospital Assistant and the Magistrate. In its former aspect, it has to be dealt with in the Medical Deptt and in the latter in the Jud Br. This may go to the Jud B. first.

(Sd) V.R.T.
20/5/04

The relief sought for by the Petitioner appears to be re-instatement in his appointment as Compounder as may be seen from the statement "I have been given nothing for the last seven months" contained in the penultimate para of the petition.

If such is the case, the Petition has to be forwarded to the Senior Surgeon for disposal (perhaps from the Medical Section of the L.B. Branch) Submitted for orders

21/5/04

I see no definite charge in the petition beyond the vague that grievance may be done to the Petr. Justice has been fully done to him, the Chief Court having given him the benefit of the doubt in the criminal case & quashed his conviction.

The Petn consists almost wholly of a criticism of the evidence witnesses and of the proceedings of the Magistrate — which [illegible] which the Govt can take no notice. I would accordingly reject the Petn

21-5-04

After the Asst Surgeon has had its say, this I believe will have to be ruled out of Court Petr

21/5/04

Rejected 24-5-04

Sd J Gay / Asst / 24/5/04

Subd

The Medical Branch of the Secretariat does not receive the returns about the dismissals or appointments of Compounders in the Taluk Dispensaries, ~~that~~ as ~~is no concern~~ they are within the province of the Senior Surgeon to whom the Petitioners must apply for reinstatement

AM 26/5

JB 27/5/04

Please give a reply (Endt) to say that his prayer is not understood.
If he has not been re-instated on his appointment, and wants to be re-instated, he must apply to the Head of the Deptt concerned.

EM 28/5/04

Cor/1/9 no 3502 dt 12/5/04
and Tan

Transfer the petn to the Secretary to the Govt of Mysore Rev Depts for disposal.

(By) Commissioner
Private Secretary

Sub

May this be transferred to the Judicial Branch

A.N.
19-5-04

I do not clearly understand the relief sought for by the petr. The petn may be taken as a complaint both against the Hospital Assistant & the Inspr. In its former aspect, it has to be dealt with in the Medical Dept & in its latter in the Jud. Br. This may therefore go to the Jud. Br. first. dt 20/5/04

G. 394

No. 255

Name of Pet

Village

Taluk

District

Date of Arzi

Date of Rece

Date of Disp

No. of Enclos

Address

the petitio

dt 19/5/04

In Subo
Inspman
dt 1/11/
in favour
in the a
against
of the Gen
Commr an
magistra
the petition
that the Pol
persons a
may be
matter an

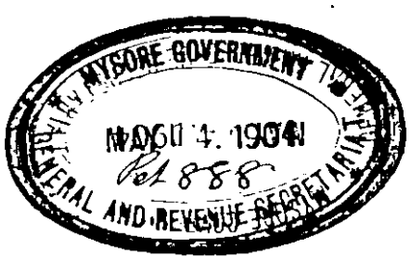
MGCPB

Bangl 14/5

No 3502
Gene Jew

OFFICE OF THE PRIVATE SECRETARY TO
HIS HIGHNESS THE MAHARAJA OF MYSORE.

Ooty, 12th May 1904



Nine Petitions as shown below, to His Highness the Maharaja, are transferred to the Secretary to the Government of His Highness the Maharaja of Mysore in the General and Revenue Departments, Bangalore, for disposal.

Nos. 1622 to 1630 of 1903-04.

Petns nos 2549 to 2550 (1626/a) to Petns

By Order,

E. Macnaghten
I.C.S.
Private Secretary
to H. H. The Maharaja of Mysore.

1623 6

To

His Highness the Maharaja Krishnaraja Wadiyar Bahadur.

Mysore Government
General and Revenue Secretariat
Mysore Petition Department
Reg'd No 25500
Date 16-5-1906

May it Shewth

That I the undersigned, your Highness's loyal subject but at your Highness's feet this humble petition of mine humbly begs for justice

I have herewith put at your Highness's feet the true Copy of the Judgement of the Chief Court given in my favour after a careful and learned hearing. May it please your Highness to peruse the statement

In this case which Mr. Ramaswamy Aiyar lodged against me before Mr. Chandy, the Assistant Commissioner of Hassan District, Mr. Chandy did much injustice to me. Mr. Ramaswamy Aiyar lodged a suit against me in the Taluq Court, saying that I set fire to a building. He brought false witnesses and the amildar and the police Inspector of the Taluq giving out that it was a false accusation, case B No. 11 Complainant brought was transfered to Hassan and after five months, having got the favour and goodwill of Mr. Chandy and the Surgeon, he lodged the case again in the Court at Hassan and sent me Summons. I went there at the appointed time. They took me inside the Court and made me stand on the Seal, and making the witness Mamni and others stand at a distance of about twelve yards, they took the Statements of both the Complainant and the accused. I fearing that the witnesses

I said that once Mamni stole a hen of mine and I gave her to the police and she was punished with a fine of two rupees. The complainant has taken her for a witness against me.

Then I asked the judge to come over to the site and there examine the places where the oven was placed; where Somna, a man of sixty years, found me; where Magani met me, and also to see how it was possible for a hired horse to come out of the house safe when the house was on fire. The judge entirely refused to see to these things which he said were very insignificant.

Then the judge asked me if I had any witnesses. I said I had. I then begged the judge to send for the police Inspector, the two police peons, who were there just before the house was on fire, and the two men who were there when the house was on fire. The judge said that these men would spoil the case, and that therefore he would not send for them. I then begged the judge to send for, at least, two men, Dadoo Sahib and Mailarappa. Then the judge said that they were the witnesses of the complainant and so he would not send for them. Then I gave other six witnesses. These were called for. Bapaji Desi Chetty, Iswara Chetty Rao took these men to the police Station, and promised some men. Some work, threatening some. They then came into the Court. Yet they gave out the truth. But one did not, for he was afraid. The next day the judge sent for me and punished me with a fine of thirty rupees. Then I begged some money from some charitable men and appealed to the Chief Court. The Chief Court returned the fine. It is doubtful whether Mr. Chandy's statement is in accordance with the witness. The judgement given me in the Chief Court shows to me that the people have done some injustice to me.

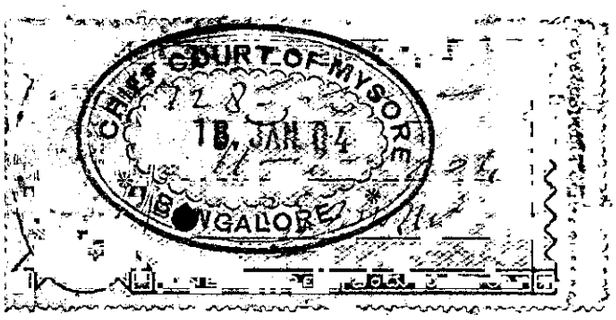
So may it please your Highness to enquire the police Inspector about the wick, the police peons who were in beat that night, Mailappa and Dasoo Sahib, all the witnesses, and whether it is true that there are birds all round the hospital building walls; where the Complainant had his oven for cooking his food, where the Complainant saw me holding the gun when he was waked by Honna the school peon, in what direction was Mani carrying water and where she met me, and where Honna who was about sixty years saw me.

Mani is said in the service book to be of thirty-two years of age. Mr. Chandy has put down forty-five years for her to say that she is too old. This shows that Mr. Chandy is inclined towards her. The Complainant took the charge of the hospital from Mr. Venkatesalu in December 1902. When the charge was being taken they both acted treasonably to the government I gave a report to the Taluq and another to the Surgeon in Dharwar. All this was shut up and they, from that time, made up their minds to deprive me of my work and put me into troubles. I have been given nothing for the last seven months. If any officer will go to Kulagere Koppalu and enquire there it will be found out that on the 27th of April 1903 I was in that village with my gun to help the people there in their performances of some ceremonies which they perform when they enter into their houses after an out-break of plague or any other epidemic.

Finally, Your Highness, may I prostrate before your feet, and beg Your Highness to see that justice is done to me. If anything I have said is untrue I shall be ever ready and willing to take upon me any punishment that Your Highness may please to punish me with.

May I beg to remain
ever Your Highness most loyal
subject

Compounder
Arkalgud Hospital



In the Chief Court of Mysore at Bangalore

Friday the 13th day of November 1903

Present.

Hon: Justice A. Ramachandra Iyer.
Chief Judge

and

Hon. Justice Alf. F. Kreitlepton
Judge.

Criminal Revision Petition No: 46 of 03-04

Criminal Revision Case No: 89 of 03-04

Prabhu Das
(By Mr: C.S. Doraswamier
& Mr: L. Sreenivasiengar)

Petitioner
(accused)

~~&~~

Ramaswamy Pillay

Counter Petitioner
(Complainant)

(By Mr. S. Ramaswamier
Govt: Advocate)

Petition against the order of
the General assistant Commissioner
and

and 1st Class Magistrate, Harrar,
in Criminal Case No: 14 of 1903-04

This Petition coming on for hearing
on Friday, the 30th day of August 1903,
the Court pronounced the following.

Order.

The accused was convicted of
having set fire to a building and
sentenced to pay a fine of Rs 30/-
Upon perusing the calendar, we were
of opinion that the sentence was
inadequate and gave notice to the
accused to show cause, why the
sentence should not be enhanced.
He was represented by an advocate
who contended that the conviction
was against the weight of evidence.

It is the Complainant and the
servant woman, Mani, who deposed
to having seen the accused standing
near the burning building. Mani's
evidence must be received with
caution

caution. Since she was admitted
an enemy of the accused. 10

The School peon who was sleepi
in the veranda of the Hospital alarm
the fire, awoke the Hospital assistan
who was sleeping in one of the rooms
and hastened to the shed accompanied
by another peon. It is noteworthy
that these two peons did not see
the accused near the shed, but saw only
the figure of a man passing through a
near an adjoining fence. It is unlikely
that the accused would have remained
at the spot when there was so much bust
the Hospital. The evidence as to identity
being free from doubt, we give the
accused the benefit of the doubt, quash
the conviction and direct that the fine
if levied, be refunded to him.

(Signed). A. Ramachandra Iyer
Chief Judge

(Signed) H. J. Meiklejohn
Judge.

True copy

Charges of application & Stamps for copy

Date of application 11-1-04
- when stamps & fees were called for Do
- on which stamps & fees were deposited - Do.
- on which copy was ready 18-1-04
- on which copy was delivered 18-1-04

Dy Registrar

Ex'd by C.S.

In the Court of the General Asst.
Commissioner and 1st Class magistrate
Hassan.

Dated 22nd August 1903.

Present - H. Chandy Esquire B.A.
1st Class magistrate

Criminal Case No. 14 of 1903 - 1904

Complainant — accused.

Government — vs — Prabhu Das.
(Ramaswamy pillé)
by mr Venkatakrishnaiyya.

Judgment.

1. The Complainant reported to the
Police of the Arkalgud Taluk that
1903 on the night of the 28th march 1903,
the accused set fire to the Depot
house that was near the Hospital
and ran away.

The police submitted a F.I.R.
under section 436 of the I.P. Code,
and reported the Case in B. Form.

The Complainant appeared

as per Notice issued from the Court and stated that he would substantiate his complaint.

2. The prosecution examined the following witnesses: —

1. Ramaswamipille 2. Honna 3. Latchma and 4. Manni.

The following Exhibits was filed.

A. Letter of the Assistant Surgeon written to the Complainant dated 8. 3. 03.

3. No Charge was framed against the accused the Case being treated as a Summons Case (Simple mischief) under Section 426 I.P.C.

Case tried on Sec 426

4 and 5. The accused stated as follows: —

I did not set fire to the depot house. I was sleeping in my house that night. The Complainant has hid against me, because I got Manni punished. He said to Hellicale. Reported against me and got me fined. He has been trying all the Could to get me transferred

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transferred from the place. In the Depot house it was on the side towards the Hospital that water was being boiled. No fire was being lighted in the room where the pony was tied. Some one might have taken a light to the Depot house to take straw for the pony.

" I was for 11 years in the police and was a duffadar for 2½ years. I afterwards resigned the appointment. I herewith submit a plan showing the hospital, the depot house etc. My shed is 110 yards distant from the Hospital. The plan was drawn up by me".

6. The following witnesses were examined for the defence:-

(1) Mahomad Hussein. (2) Gouse Mohidin (3) Yella (4) Lakshina and (5) Dase Gowda.

A plan showing the Hospital, depot house etc is filed as Exhibit I

7. The Complainant was the Hospital Assistant at Arkalgud, and the accused was a Compounder under him. It is satisfactorily proved from the Evidence of the Complainant and from Exhibit A, that there was ill-will between the Complainant and the accused. The accused admits this in his statement. The Complainant had reported against the accused and got him fined. The accused knew that the Complainant had recommended his transfer also.

8. On the night of the 28th March, the 2nd witness Honna who was lying on the front Varandha of the dispensary called out to the Complainant that the depot-house a detached building adjacent to the dispensary was on fire. The Complainant who was lying down in a room in the dispensary got up

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got up and ran to the depot house. Manni (Prosecution 4th witness) a hospital servant followed him, and Honna and Lakshmana (3rd witness) followed her. When Complainant went near the depot house, he saw the building on fire and saw some one jumped down from the roof of the building and ran away towards the Pettah side. The Complainant saw the accused stand at the foot of the building with a gun in his hand. The Complainant identified him in the glare of the fire. He called out to him whether what he did was proper. The accused ran away in the direction of his shed.

Manni who was the one who immediately followed the Complt also saw the accused ran away. The other two witnesses did not see the accused. They were coming behind. They stated before the police that they heard the Complainant call out

No mention made and not seen by him

that they accused was running away, but in this Court they denied having said so. It should be noted that the accused is still Compounder at Arkalgud, and his wife is Midwife, while the Complainant is no longer at Arkalgud.

9. A half burnt cloth wick was found below the debris by Lakshma the next day. The Complainant states that he showed it to the Police Inspector, but that the latter drew his mahazar in the Headman's Bungalow made no detailed examination of the dept house, and did not note the fact of the wick having been found.

10. The question is entirely one of believing the prosecution evidence All that I have to decide is whether the Complainant and witness are to be believed or not. The accused has not proved that there was any such deep seated

Add-on from Wednesday

// next day //

We are not sure we can be dept sealed to be & of record & produce exhibits

enmity between him & the Complainant that the latter should make a totally false Criminal Charge against the accused. The Complainant is a government Servant in a responsible position. He Complained to the police identifying the accused the very next day. He has had the honesty not to have identified the other man Concerned in the incendiarism though he is morally convinced it was one "Ali". This man jumped down with his back to the Hospital Assistant and ran away in an opposite direction and could not, therefore, be properly identified. Mannu has enmity against the accused, but it will be seen from the plan submitted by the accused himself that she could have seen him run away, when the Compt's statement that she came up immediately after him (Compt+)

Aur. new evidence

Mannu Lower w.c.

is believed.

11. The defence has been to show that the fire was accidental. But the accused admits that it was only in the portion of the building facing the dispensary that any fire was being lighted and the Mahajan and the prosecution evidence has made it clear that this portion was not burned down. Thus the defence evidence has little value. The accused says some one might have lighted a match in the other side of the building, for giving straw to the pony of the Complainant and that the bundles of straw bundles of straw in it must have caught fire, but this is merely a surmise and has no value as against the positive evidence of the Complainant and the finding of the Court.

12. I Consider it accordingly proved

proved that the accused either set fire to the building himself or abetted another in doing so.

13. The question has to be decided under what section of the P.C, the accused is guilty. The offence does not come under section 436 as the building was not one ordinarily used as a human dwelling or as a place for the custody of property. It was a vacant building supposed to have been ~~intended~~ intended for locating ~~the~~ patients, but in which no patient was ever located, as it was in ~~bathing~~ Condition. It was usually vacant, old boots, broken chairs &c, having been thrown in it. A pony of the Complt had been temporarily tied in but the Complainant does not keep a pony and had got or hired one very temporarily for

plague purposes. The building was not a proper Stables either. The total loss after burning most of it down is said to have been between 20 or 30 Rupees so that the building must have been a very "kachia" one. As it was neither a human dwelling, nor a dwelling ordinarily used for the Custody of property, and as the loss is below Rs 100 or 50 Rs, the offence could be one, only under Section 426 I.P.C. (Vide Sections, 427, 435 and 436 I.P.C).

14. I find accordingly that the accused Committed mischief or abetted the Commission of mischief by causing the destruction of the portion of the depot house and of the straw or other things in it and thereby Committed and offence punishable under Section 426 or 426/109 I.P.C.

15. In awarding punishment I have to consider what the intention of the accused was. It is

It is in evidence that the accused ran away reeling like a drunken man. The Complainant says he had found the accused drunk previously also. It is difficult to fix the intention of a drunken man. One has to do it from the surrounding circumstances. Honna could not have seen the fire if was asleep, nor, could the Complainant have come out at once and gone earlier than Honna if the Complainant were asleep. The fire, must, therefore, have been at X or XI. The accused could, accordingly, probably have had no intention of burning the pony to death. Were it so, he would have selected a later hour when he could be certain that all were sound asleep. His intention must have been to worry and annoy the Complt and cause him some slight damage. I consider it sufficient if he is punished with a fine, seeing

Fire must have been at 10 or 11 -

that he is likely to be punished, departmentally also possibly with dismissal.

16. It is ordered that the accused do pay a fine of ~~Rs~~ 30/- (Thirty) or in default suffer Simple imprisonment for three weeks.

17. In this Case, if the Inspector had been more Capable or more honest, and had noted the fact that the portion of the building where fire was occasionally lighted was infact, and if he had examined the debris to find if any torch or other thing was to be found under-neath, or if he had taken evidence when the half burned wick was actually found and shown him a B. Report would not have been Submitted.

22. 8. 03.

(Signed) K. Chandy
1st Class magistrate

Copy applied for 27. 8. 03
Do — Delivered 28. 8. 03.

No. of words 1570
Copying fee 1—8—0
Comp. fees — 0—5—4
1—13—4

In the Chief Court of Mysore.
Bangalore.

Cr: Revn Petn: No. of 03-04.

Prabhu Das ——— accd: Petr.

~~Govt~~ Ramaswamy Pillai } ——— Complt: Respt.

Under Sec 439 Cr: Pro: Code, the accd abovenamed begs that this Hon'ble Court may be pleased to send for the records in Cr: Case No. 14 of 03-04 on the file of the Civil and Sessions Court ~~of~~ 1st class Maghi Hassan, & revise the proceedings & set aside the Conviction & Sentence passed upon him (the accd) on the following among other grounds -

(1) Inasmuch as it is observed by the learned Maghi that the Complt & manni (Pro: 4th Witt:) are ill disposed towards the accused & that the latter bears hostile Enmity against the him, & inasmuch these are the only witnesses who are said to have identified the accused, the learned Maghi ought to have viewed their evidence with great caution if not suspicion.

(2) The fact that the wick was found by the ~~I~~ P. S. W from below the debris & that it was shown to the Police by the Complt are not true since no mention whatever is made of the same in the Mahazar prepared by the Police Inspector.

(3) Even if true, there is nothing on record to connect the accused & the wick.

Even

(4). The inference that the learned magt draws viz that the intention of the accused must have been merely to worry & annoy the Complainant & cause him some slight damage, is incorrect, inasmuch as the debôt which is alleged to have been set fire to neither does not belong to the Complainant. & the accused can neither cause worry or annoyance nor damage to the Compt by setting fire to a building in which he has personally no interest whatever.

5. Further if the object of the accused was to set fire stealthily & run away unobserved by any one, it is least likely he would remain there after his business was over, & allow himself to be identified by the witness for the prosecution & then run away.

6. Since the accused is a Compounder in the hospital & his the conviction if allowed to stand will cost him his appointment & thereby the means of his living, he most humbly prays that this Hon'ble Court may be pleased to send for the records & give an opportunity to him to show that he is innocent & the prosecution was launched by the Hon: asstt out of ill will & spite.

P.S.W.

Hb

No. G 6454 / 4(2)

Govt

MYSORE ~~DEWAN'S OFFICE~~,

General Branch.

Dated Bangalore 24th June 1904.

Endorsement granted to Prabhu Das, Compounder, Arakalgude Dispensary, in reply to his Petition Registered No. 2550 dated the 14th May 1904, to the address of His Highness the Maharaja of Mysore.

Petitioner is informed that his prayer is not understood. If he has not been re-instated in his apptt, and wants to be re-instated, he must apply to the Head of the Deptt. Concerned.

2. The enclosures of his petn are returned herewith.

By Order,

Offg Secy's order

for Offg Secretary.

12/6/04

28/5/04